case was an application for guardianship of a minor son age about nine years, and the application was opposed by the maternal grandfather on the ground that he and his wife had been looking after the minor ever since his birth. The application was brought under the Guardianship and Wards Act which does not apply in this territory. From the report in the I.L.R. Allahabad Series Vol. 49 at p. 332 it appears that the question of Mahommedan Law was not even considered. Further the application is in regard to a male child and I am not satisfied that the decision would necessarily have been the same if the application had been in respect of a female child. In any case the decision is not binding on me. From a study of the 5th Edition Mahommedan Law by Syed Ameer Ali Vol. II, it is clear that the rights of guardianship varies according to the doctrines of the various Mahommedan schools. It is not known to what school or schools plaintiff and the defendant belong. The defendant, in point of fact, was originally a Hindu. In the circumstances I can only follow the rule which is stated at p. 252 of Syed Ameer Ali, and which has been adopted by the Court of Algiers which, in effect, is that if it cannot be ascertained to which sect the child is supposed to belong the question of guardianship must depend on a consideration of what is best for the child as a Moslem child.

In this case I am satisfied that the children are being properly brought up by their maternal grandmother with whom they had been living for about five years and latterly at any rate separate from their mother. So far as the girls are concerned I am satisfied that it is in their best interests that they should remain with their maternal grandmother who, I am sure, is more likely to give them the care of a mother than the plaintiff or his present wife who is less likely to take as much interest in the children. The plaintiff himself is, to my mind, quite unsuited to look after girls of the ages of these three. So far as the boy is concerned I have come to the conclusion that it would not be in his best interest to take him away from his three sisters with whom I am satisfied that he is receiving proper care and attention from the maternal grandmother.

It is to be noted that the plaintiff is paying $50 a month towards the maintenance of the children. I have little doubt that he brought this action because he felt that if he could get the custody of the children the cost to him of their maintenance would be less.

For these reasons the plaintiff's claim must be dismissed with costs.

Claim dismissed with costs.

N. HAMID v. PERUMAL & TWO ORS.

[Orig. Civ. Juris. (Munro, J.) June 28, 1951]

[Singapore — Suit No. 873 of 1950]

Landlord and Tenant — Control of Rent Ordinance 1947, s. 14(1)(i) — Position of tenant not in occupation by himself or any member of his family — Notice to quit — Notice served on servant — Whether properly served on tenant.

In this case the plaintiff claimed possession of premises let to the first defendant on the ground that (1) the first defendant had abandoned his tenancy and (2) he was not in occupation of the premises by himself or any member of his family. The first defendant had left the colony long before the issue of the writ but his attorney the second defendant paid the rent on his behalf and occupied the premises. A notice to quit determining the tenancy of the first defendant was served in the colony on his servant but the notice was not received by the first defendant.

Held, that a tenant who is not in occupation either by himself or any member of his family loses the protection of the Control of Rent Ordinance 1947 unless he fulfills the requirements of occupancy laid down in **Brown v. Brash**(1). A non-occupying tenant who installs in the premises an accredited agent who pays the rent on behalf of the tenant cannot be said to have wholly abandoned his tenancy.

Held further, that a notice to quit determining the tenancy served on the servant of the tenant is properly served on the tenant even though in fact the notice is never received by the tenant.

Tanham v. Nicholson(3) and

School Board for London v. Peters(4) applied.

Cases referred to:—

(1) *Brown v. Brash* (1948) 2 K.B. 247; (1948) 1 All E.R. 922.

(2) *Low Tangchang Limited v. Makbool* District Court Appeal No. 4 of 1949 (Unreported).

(3) *Tanham v. Nicholson* (1872) 5 L.R.H.L. 561.

(4) *School Board for London v. Peters* (1902) 18 T.L.R. 509.

ACTION.

K. K. Bezboruah for the plaintiff.

C. G. Menon for the defendants.

The facts appear sufficiently from the judgment.

Cur. Adv. Vult.

Munro, Ag. J.: — In this action the plaintiff claims possession of the ground floor of premises known as 1023 Jansen Road, Singapore, which he bought on 13th April 1948. At the time of his purchase the 1st defendant was tenant of this ground floor at a rental

of $15 per month. As I understood the evidence the house itself is a raised house and the ground floor consists of the underneath part of the house and is enclosed by wooden planks or slats with one entrance or doorway. This ground floor is not divided into rooms but is occupied as one room by a number of Indian laundrymen who carry on business and live and sleep there. The whole floor was let to the 1st defendant who carried on his own business there and before his departure for India lived there.

The plaintiff alleged that the 1st defendant was living on the premises at the time of his purchase and left for India some months later but I am satisfied from the evidence provided by the Power of Attorney produced that the 1st defendant left for India in or about the month of May 1947. The 1st defendant has not been back in Singapore since. The plaintiff accordingly contends either that the 1st defendant has abandoned his tenancy entirely or alternatively that he is no longer in occupation of the premises within the meaning of section 14(1)(i) of the Control of Rent Ordinance 1947, and in either event he claims to be entitled to an order for possession of the premises. It was urged in reply for the 1st defendant that there was evidence of intention on his part to return to the premises and that he was in continuous occupation up to now through attorneys or agents of his.

The evidence led on behalf of the 1st defendant did not satisfy me that there was an intention on his part to return to the premises. The witness, Suppiah, said he had been in charge of the 1st defendant's laundry business on the premises since 1948 and that he was still in charge of it. The witness, Kalimuthu, however, who said he was a cousin of Suppiah, declared that though he paid rent in the 1st defendant's name during Suppiah's absence he knew nothing about the 1st defendant and that the business he looked after in Suppiah's absence was Suppiah's business. Apart from the recital in the Power of Attorney of 16th May 1947 saying that the 1st defendant was going to India on a short holiday, a statement which has been out of date for some years as regards any present intention of returning to Singapore, the only evidence of any such intention was the evidence of the witness, Suppiah, who said he was in regular correspondence with the 1st defendant and had in March received a letter from him saying he was coming back in July. Neither this letter nor any other letter from the 1st defendant was produced in evidence. The witness, Suppiah, did not impress me as a witness of truth and I do not accept his statement about the letter sent by the 1st defendant saying he was returning in July. I find, therefore, that there is no proof of any intention to return on the part of the 1st defendant.

I do not think, however, that there is sufficient proof that the 1st defendant has wholly abandoned his tenancy. Rent was being paid on his behalf up until the time that the plaintiff refused to accept any more rent and the witness, Suppiah, was able to trace through the Powers of Attorney produced that his right of occupancy came from the 1st defendant.

The plaintiff, however, is entitled to his order if he can establish that the 1st defendant is not in occupation of the premises either by himself or any member of his family. It is admitted that no member of the 1st defendant's family occupies the premises. I have no difficulty in finding in this case that the 1st defendant himself is not in occupation. The requirements of occupancy set out in the judgment of Asquith, L.J. in the case of *Brown v. Brash*[1] are in my opinion not fulfilled in this case and it is an even clearer case for an order than the unreported Singapore case of *Low Tangchang Limited v. Makbool*[2]. There is here neither present physical occupation by the 1st defendant nor any satisfactory evidence that he intends to return.

One other point was taken by Mr. Menon and that was that service of the Notice to Quit was bad. The notice to quit dated 10th August 1950 was served personally on the witness, Kalimuthu, at the premises. According to the evidence of the witness, Suppiah, Kalimuthu was in charge of the 1st defendant's business at the premises and according to Kalimuthu's evidence he is paid a salary by Suppiah who is the 1st defendant's agent. Kalimuthu accordingly was an employee and also the person in charge of the 1st defendant's business. Mr. Bezboruah cited the cases of *Tanham v. Nicholson*[3] and *School Board for London v. Peters*[4] in support of his contention that the notice was properly served and I agree that it was.

Accordingly there must be judgment for possession as claimed by the plaintiff and I make an order for delivery of possession on 31st July 1951. I also award to the plaintiff *mesne profits* as claimed and costs.

Judgment for the plaintiff.